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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,260	12/22/2003	Eric C. Steindorf	KCX-771 (19263)	4463
22827	7590	07/26/2004	EXAMINER	
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			ART UNIT	PAPER NUMBER

3743

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/743,260	Applicant(s) STEINDORF, ERIC C.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on December 22<sup>nd</sup>, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 127 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 14, 17-19, 21-24, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 12, 13, 15, 16, 20 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12.22.2003</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

This application contains claims directed to the following patentably distinct species of the claimed invention: Figure(s) 3

Figure(s) 4

Figure(s) 5

Figure(s) 6

Figure(s) 8

Figure(s) 9

Figure(s) 10

Figure(s) 11

Figure(s) 12

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

Art Unit: 3743

the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Neal P. Pierotti on July 22<sup>nd</sup>, 2004 a provisional election was made without traverse to prosecute the invention of figure 3. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6 through 9, 11, 14, 17 through 19, 21 through 24, 26, and 27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims 6, 11, 21, and 26 are drawn to a non-elected species of figure 4.

Claims 7 and 22 are drawn to a non-elected species of figure 5

Claims 8, 9, 18, 19, 23, 24, and 27 are drawn to a non-elected species of figure 6

Claim 17 is drawn to a non-elected species of figure 11

Claim 14 is drawn to a non-elected species of figure 12

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3743

Claims 1, 2, 3, 5, 10, 12, 13, 20, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson US Patent No. 3,490,447. Referring to claim 1, Jackson discloses a surgical mask comprising a body portion (see figure 1) configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion, the body portion having a baffle layer having an outer and an inner surface with a plurality of projections extending from at least one of the outer and inner surfaces, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through (see figures 1 through 3).

Referring to claim 2, Jackson discloses an apparatus wherein the projections and the outer surface of the baffle layer define plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels (see figures 2 and 4).

Referring to claim 3, Jackson discloses an apparatus wherein the body portion has a first layer contacting the projections of the baffle layer; and the body portion has a third layer contacting the inner surface of the baffle layer (see figures 2 and 4).

Referring to claim 5, Jackson discloses an apparatus wherein the projections are hexagonal pillows (see figures 1 through 3).

Referring to claim 10, Jackson discloses an apparatus wherein the plurality of projections extend from the outer surface of the baffle layer (see figures 1 through 3).

Art Unit: 3743

Referring to claim 12, Jackson discloses a surgical mask that comprises a body portion (see figure 1) configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment such that the air of respiration is drawn through the body portion, the body portion having at least one layer, the layer having an outer surface facing away from the user when worn and an inner surface facing towards the user when worn, the layer having a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion (see figures 1 through 3).

Referring to claim 13, Jackson discloses an apparatus wherein the body portion has an inner facing layer contacting the skin of the user when worn, an outer facing layer, and a filtration media layer disposed between the inner facing layer and the outer facing layer (see figure 4), wherein the layer with the plurality of projections is any one of the inner facing layer, outer facing layer, and filtration media layer (see figure 4).

Referring to claim 20, Jackson discloses an apparatus wherein the projections are circular pillows (see figures 1 through 3).

Referring to claim 25, Jackson discloses an apparatus wherein the plurality of projections extend from the outer surface of the layer having the projections (see figures 2 and 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson US Patent No. 3,490,447 in view of Springett et al. US Patent No. 6,102,039. Referring to claims 4 and 15, Jackson discloses the applicant's invention as claimed with the exception of providing a first layer/outer facing layer that is stiffer than the baffle layer/filtration media layer.

Springett discloses a molded respirator containing sorbent particles that does provide a first layer/outer facing layer that is stiffer than the baffle layer/filtration media layer. Therefore it would be obvious to modify Jackson's invention by providing a first layer/outer facing layer that is stiffer than the baffle layer/filtration media layer in order to assist in guiding the particles/fluids away from the users mouth and nose.

Referring to claim 16, Jackson discloses the applicant's invention as claimed with the exception of providing an additional layer that is the layer furthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections.

Springett discloses a molded respirator containing sorbent particles that does provide an additional layer that is the layer furthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections. Therefore it would be obvious to modify Jackson's invention by providing an additional layer that is the layer furthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections in order to assist in guiding the particles/fluids away from the users mouth and nose.

Art Unit: 3743

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP

July 26<sup>th</sup>, 2004



Henry Bennett  
Supervisory Patent Examiner  
Group 3700